IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6378 of 2007
With
CRIMINAL MISC.APPLICATION No. 6381 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MEETABEN KAMALBHAI CHANDWANI PROPRIETOR , BHAKTI TEXTILES - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR UTPAL M PANCHAL for Applicant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/09/2007

COMMON ORAL JUDGMENT

1. As common question of law and facts arise in both these applications and they are between the

same parties, they are being disposed of by this common order.

2. By way of these applications under section 482 of the Criminal Procedure Code, the respective petitioners have prayed for an appropriate order to quash and set aside the criminal complaints No.40402 of 2006 and 39672 of 2006 pending in the Court of learned 13th Additional Senior Civil Judge & JMFC, Surat.

3. The aforesaid two criminal complaints are filed by the respondent No.2 herein – original complainant against the respective petitioners in the Court of learned 13th Additional Senior Civil Judge & JMFC, Surat for the offence under section 138 of the Negotiable Instrument Act; 1881 (hereinafter referred to as “the N.I.Act” for short) alleging inter alia that the original complainant was given two cheques in question towards the outstanding amount towards the goods sold by the original complainant to the petitioners herein and that both the aforesaid

cheques came to be deposited with the bank and both the cheques came to be dishonoured with an endorsement **“today's opening balance insufficient.”** It is further alleged in the aforesaid complaints that thereafter the petitioners were served with statutory notices as required under section 138 of the N.I.Act and so far as the notices sent by R.P.A.D., they were returned by the postman with an endorsement **“unclaimed,”** however, the petitioners were served with the notices through U.P.C. and the accused persons have given evasive reply by telegram. Thus, it was averred in the complaints that inspite of the statutory notices, the amount has not been paid under the aforesaid two cheques in question and therefore, it is alleged that the petitioners have committed offence under section 138 of the N.I.Act. The learned Magistrate issued the summons upon the petitioners for the offence under section 138 of the N.I.Act. Both the petitioners thereafter preferred Criminal Misc. Application Nos.3451 of 2007 and 3456 of 2007n before this Court for

quashing the aforesaid complaints, however, both the applications came to be withdrawn by the respective petitioners with a liberty to file a fresh applications and accordingly thereafter present applicants have been filed for the aforesaid reliefs.

4. Shri Utpal Panchal, learned advocate appearing for the respective petitioners has vehemently submitted that the petitioners have not committed any offence as alleged under section 138 of the N.I.Act and that there are no legal debts as the petitioners' firm had no business transactions or business relations with the firm of the complainant and thus, there are no dues due and payable by the petitioners to the complainant. It is also further submitted by him that the petitioners have never issued any cheque much less the impugned cheques to the complainant. It is submitted that the petitioners' firm is doing the business as a broker and commission agent for the clothes and by introducing the manufacturers and purchasers,

the petitioners get the commission for the transactions made between the parties only. It is further submitted that the petitioners' firm was broker and commission agent of one Sainath International and the cheques in question were given to the said Sainath International and the cheques were never given to the original complainant. It is further submitted that said Sainath International was wound up and the weavers were harassing the petitioner and her husband and were also giving threats and therefore the husband of the petitioner and the petitioner had filed the complaint before the Umra Police Station on 1.9.2006 being CR No.531 of 2006. It is also further submitted by him that the respondent No.2 had sold some goods to the aforesaid Sainath International and for filing the present criminal cases under the provisions of section 138 of the N.I.Act against the petitioners, the respondent No.2 has made some alterations in the bill, which can be verified from the bills produced by the investigating authority of another case, which

are part of the charge-sheet. Therefore, it is submitted that as there are no legal dues, it cannot be said that the petitioners have committed offence under section 138 of the N.I.Act and therefore, it is requested to quash the aforesaid complaints.

5. On the other hand, Shri K.T.Dave, learned APP while opposing the present applications has submitted that on bare reading of the aforesaid two complaints, it prima facie makes out the offence under section 138 of the N.I.Act and all the ingredients of section 138 of the N.I.Act are fulfilled and whatever is submitted on behalf of the petitioners are all there defences which are required to be considered at the time of trial on leading proper evidence and the same are not required to be considered at this stage in an applications under section 482 of the Criminal Procedure Code. Under the circumstances, it is requested to dismiss both the applications.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that earlier respective petitioners had preferred similar applications under section 482 of the Criminal Procedure Code to quash the impugned complaints, however, after arguing the matters for considerably long time, Shri Panchal learned advocate appearing for the petitioners sought permission to withdraw the said applications with a liberty to file fresh applications. Learned counsel appearing for the petitioners has failed to show any changed circumstances after withdrawal of the aforesaid two Criminal Misc. Applications which were withdrawn on 1.5.2007. It is also required to be noted that the aforesaid two applications came to be withdrawn on 1.5.2007 after arguing the matters for considerably long time and immediately thereafter the present applications have been filed on 8.6.2007 without there being any changed circumstances. Be that as it may, even

on merits also, the present applications are required to be dismissed.

8. It is the contention on behalf of the petitioners that there are no legal dues due and payable to the original complainant and that there was no business transactions between the petitioners and the respondent No.2 herein – original complainant and that no cheques were issued to the original complainant and it is very surprising how the cheques in question came in the possession of the original complainant. It is also further submitted that there are some alterations in the bills / chalans and therefore, the impugned complaints are required to be quashed and set aside. Now, on bare reading of the averments and allegations in the complaints, it prima facie discloses offence under section 138 of the N.I.Act. All the ingredients of section 138 of the N.I.Act are fulfilled i.e. cheques were in possession of the original complainant; they were deposited by the same; they are returned / dishonoured by the

bank with an endorsement “**insufficient fund**”; statutory notices were issued and served upon the petitioners – original accused and that within stipulated time, amount under the cheques in question have not been paid. Under the circumstances, when all the ingredients of section 138 of the N.I.Act are fulfilled, all other aspects i.e. there were no legal dues and/or debts; there were no business transactions are not required to be considered at this stage while considering applications under section 482 of the Criminal Procedure Code and all the submissions are defences of the accused which are required to be considered only at the stage of trial on leading proper evidence. Even otherwise, there is statutory presumption under section 139 of the Criminal Procedure Code of course which is rebuttable, however, the said rebuttal can only be on leading proper evidence. Under the circumstances, no case is made out to quash the impugned complaints / criminal cases for the offence under section 138 of the N.I.Act and all

the submissions which are stated hereinabove are all defences, which are required to be considered only at the time of trial on leading proper evidence. Under the circumstances, both the applications deserve dismissal and are accordingly dismissed.

[M.R.Shah, J.]

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